

Appl. No. 10/534,950
Amdt. dated March 13, 2009
Reply to final Office action of Dec. 15, 2008

REMARKS

If the Examiner believes that there are any unresolved issues in any of the claims now pending in the application, the Examiner is urged to telephone Peter L. Michaelson, Esq. at (732) 542-7800 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Rejections under 35 U.S.C. § 103

Claims 1-9 are presently in the application. Claims 1-5 and 8-9 stand rejected under 35 U.S.A. 103(a) as being unpatentable over Liao in view of Qiang.

Claims 3-4, 6 and 10 have been canceled; claims 1, 2, 7 are currently amended; and claims 5, 8 and 9 remain as previously presented.

The Examiner urges that Liao disclose an acidic emulsified mayonnaise-like food without eggs, wherein the content of protein is less than 0.5% by mass, edible oil, vinegar, salt, polysaccharides and seasonings. The Examiner concedes that the reference fails to expressly disclose an esterified compound composed of a potato starch or a hydrolysate thereof and an alkenylsuccinic acid, an esterified compound composed of waxy cornstarch or a hydrolysate thereof and alkenylsuccinic acid wherein the content of the esterified compound is 0.1 to 5.0% by mass of the total mass of acidic emulsified mayonnaise-like

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food, and a thickening polysaccharide being 0.01 to 2.5% by mass of the total mass of the acidic emulsified mayonnaise-like food, wherein the mass ratio of the esterified compound to the thickening polysaccharide is from 2:1 to 10:1. It is further urged that Qiang teaches using an octenyl succinate starch which is an esterified compound comprising a starch of hydrolysate and an alkenylsuccinic acid at 1% and xanthum gum at 0.05% in salad dressings for the purpose of improving the dispersion of the substances in the product, emulsion stability, appearance and taste.

The Examiner further urges that Hamm teaches corn starch, waxy corn starch and potato starch as being alternative substitutes for mayonnaise-like sauce bases for the purpose of providing a thickened stable sauce base.

The conclusion is reached that it would have been obvious to one skilled in the art at the time of Applicants' invention to use the starch and gum of Qiang and Hamm in Liar to provide a thickened food substance having improved stability, appearance and taste. This rejection is traversed as follows:

The present invention is directed to acidic emulsified mayonnaise-like food that is classified as a semi-solid dressing in accordance with the classification of dressings in the Japanese Agricultural Standards and has a viscosity of 30,000 c or more. In contrast thereto, the product described in Cawing is a liquid dressing having fluidity as in said oil and is clearly not a semi-solid

dressing of the type described by Applicants in the instant application.

In order to prove and establish this contention, Applicants produced dressings according to the prescription shown in Table 2 of Cawing and the experimental data manifests the results thereof. As shown in the Experimental data, the dressings according to Cawing have a viscosity of less than 30,000 c and, consequently, are classified as an emulsified liquid dressing (viscosity less than 30,000 c) in accordance with Appln. No. 10/534, 950 the classification of dressings in the Japanese Agricultural Standards (see attachment). Accordingly, though the dressing of Cawing, which is classified as an emulsified liquid dressing, and the acidic emulsified mayonnaise-like food of the present invention which is classified as a semi-solid dressing (viscosity 30,000 c or more) are both dressings, their fields of technology are totally different from each other. In the instant case, the viscosity is expressed by a unit of "c", but it can also be expressed by a unit of "mPa's" that is used in Examples in the instant specification. Both differ only in expression and $1\text{ c} = 1\text{mPa's}$.

The viscosity of emulsified liquid dressing is lower than that of semi-solid dressing so physical properties described in emulsified liquid dressing differs from that of semi-solid dressing. More specifically, suppression of viscosity reduction with time and shape retaining ability which is the object of the present

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invention are not severely demanded too much in emulsified liquid dressings. Accordingly the technology fields of the present invention differs markedly from Cawing.

Consequently, the invention described by Cawing is not classified as a semi-solid dressing and is clearly unlike the instant invention. Accordingly, the technology fields are vastly different from each other and it is apparent that there is no basis for urging that the present invention is not patentable.

The Examiner has also cited the Hamm publication as a reference. It should be noted that this reference was published in October 2003. The priority date of the instant application is November 18, 2002 and the international date is July 29, 2003. Accordingly, this reference does not appear to be applicable with regard to the present application.

Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Liar in view of Cawing. Claim 6 has been canceled and claim 7 has been amended.

The Examiner urges that Liar, Cawing and Hamm teach the food product in issue but fail to expressly disclose where the degree of substitution of the ester groups are from 0.005 to 0.020. However, the Examiner further urges that Chen discloses using cornstarch to prepare alkenyl succinate starch with a degree of substitution of ester groups of 0.0018, 0.017, 0.007 for

the purpose of providing a thickened food. The Examiner concludes that corn starch, waxy corn starch and potato starch have similar compositions and structures and are substantially interchangeable., so making it obvious to use a starch with the substitution as taught by Chen in Liar to provide a thickened food. This rejection is opposed as follows.

Applicants' invention is directed to acidic emulsified mayonnaise-like food that is classified as a semi-solid dressing in accordance with the classification of dressings set forth in the Japanese Agricultural Standards and has a viscosity of 30,000 c or more. In marked contrast, the product described in the Cawing patent is a liquid dressing having fluidity as in salad oil and is clearly not a semi-solid dressing in marked contrast with the product claimed in the instant application. In order to prove the validity of this statement, Applicants are transmitting herewith experimental data. Applicants produced dressings in accordance with the information set forth in Table 2 of Cawing and the accompanying experimental data reveals the results thereof. As shown in the data, the dressings prepared in accordance with the Cawing reference have a viscosity of less than 30,000 c{ and are therefore classified as an emulsified liquid dressing in accordance with the classification of dressings in the Japanese Agricultural Standards (see attached information). Accordingly, the dressing of Cawing which is classified as an emulsified liquid dressing, and the acidic emulsified mayonnaise-like food of the present invention,

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which is classified as a semi-solid dressing (viscosity:30,000 c or more, are both dressings. However, their field of technology are totally different from each other. In the instant case, the viscosity is expressed by a unit of "c" but it can also be expressed by a unit of "mPa's" that is used in the Examples of the present application. Both differ only in expression, and 1 c= 1 mPa's.

The viscosity of emulsified liquid dressing is lower than that of a semi-solid dressing. Accordingly, physical properties desired in emulsified liquid dressings differs from that of semi-solid dressings. More specifically, suppression of viscosity reduction with time and shape retaining ability which is the object of the present invention are not severely demanded too much in emulsified liquid dressings. Accordingly, the technology fields of the present invention differs markedly from that of Cawing.

In light of the foregoing, the invention of Cawing is not classified as a semi-solid dressing, unlike that of the present invention. Accordingly, the technology fields are different from each other, and it is therefore obvious that there is no motivation to combine the both, so enhancing the patentability of the instant invention.

The claims, as they now stand, are considered to be in condition for allowance and action to that effect is most earnestly solicited.

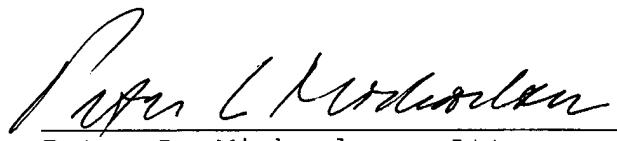
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Applicants are also transmitting herewith a Declaration under 37 CFR 132 of Akemi Sato accompanied by an Experimental report which clearly reveals that the dressing of Qiang is classified as an emulsified liquid dressing having a viscosity of less than 30,000 cP in accordance with the classification of dressings in the Japanese Agricultural Standards in contrast with the acidic emulsified mayonnaise-like food of the instant invention which is classified as a semi-solid dressing with a viscosity of 30,000 cP or more.

The information transmitted by Applicants clearly indicates that the claimed subject matter herein clearly distinguishes from the prior art cited by the Examiner and it is respectfully requested that the application be passed to issue.

Respectfully submitted,

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CERTIFICATE OF MAILING under 37 C.F.R. 1.8(a)

I hereby certify that this correspondence is being deposited on **March 13, 2009** with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Signature

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